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2012 Edition

Legal Separation in Connecticut

A Guide to Resources in the Law Library

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Introduction

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- "A decree of legal separation shall have the effect of a decree dissolving marriage except that neither party shall be free to marry." Conn. Gen. Stats. [§ 46b-67\(b\)](#) (2011).
- "The plaintiff filed for **legal separation** on May 11, 2001, on the ground of irretrievable breakdown. The defendant filed a cross complaint for dissolution of the parties' marriage. On October 15, 2002, the **court rendered judgment dissolving the marriage.**" [Raso v. Raso](#), 92 Conn. App. 678, 679, 886 A.2d 863 (2005). (Emphasis added.)
- "The plaintiff . . . commenced this action for a **legal separation** and other relief by a complaint dated May 23, 2005. A copy of the writ of summons and complaint was served in hand on the defendant on May 24, 2005. The defendant did not file an appearance, and the matter was placed on the uncontested list for January 26, 2006. On January 26, 2006, the plaintiff appeared and filed a **motion to amend her complaint, requesting a dissolution** of the marriage rather than a legal separation. The defendant did not appear at the hearing, and a judgment of dissolution was rendered by the court . . ." [Berzins v. Berzins](#), 938 A. 2d 1281 (2008). (Emphasis added.)
- "In this issue of first impression, we are called on to determine whether the **involuntary conservators of a conserved person can respond** to an action for legal separation filed against the conserved person by filing an answer and cross complaint seeking a dissolution of marriage on behalf of the conserved person. We answer that question in the affirmative and, therefore, reverse the judgment of the trial court dismissing this cross complaint." [Luster v. Luster](#), 128 Conn. App. 259, 17 A. 3d 1068 (2011). (Emphasis added.)
- "In *Szot v. Szot*, 41 Conn. App. 238, 674 A.2d 1384 (1996), we reversed the trial court's judgment that **converted a legal separation into a marital dissolution** on the ground that the court had violated the plaintiff's right to due process by terminating a hearing prematurely and, thus, denying her a reasonable opportunity to be heard on the issues involved. *Id.*, 238-39. Our recitation of the facts in *Szot* is instructive." [Eilers v. Eilers](#), 89 Conn. App. 210, 216, 873 A.2d 185 (2005). (Emphasis added.)
- "The procedure to convert a decree of legal separation into a decree of dissolution is governed by General Statutes §§ 46b-65 and 46b-66 and Practice Book §§ 25-36 and 25-37. Pursuant to § 46b-65(b) and § 25-36, a motion or petition for a decree of dissolution after legal separation may be filed at any time after the entry of a decree of legal separation and must state, inter alia, that the parties have not resumed marital relations. Thus, 'a party seeking to convert a legal separation into a dissolution under General Statutes 46b-65(b) must comply with Practice Book [§ 25-36] which requires the petitioner to state in the petition whether the parties have resumed marital relations.'" [Buggy v. Buggy](#), Superior Court, Judicial District of Stamford-Norwalk, No. FA054005647S (Oct. 25, 2010) (2010 WL 4723213).

Section 1: Effect, Definition and History

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to the distinction between legal separation and a dissolution of marriage.

DEFINITION:

- **EFFECT OF DECREE OF LEGAL SEPARATION:** "A decree of legal separation shall have the effect of a decree dissolving marriage except that neither party shall be free to marry." Conn. Gen. Stat. [§ 46b-67](#)(b) (2011)
- " . . . a decree of separation does not affect the married status of the separated persons." *Viglione v. Viglione*, 22 Conn. Supp. 65, 68, 160 A.2d 501 (1960).

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2011)
[§ 46b-65. Filing of declaration of resumption of marital relations; dissolution of marriage after legal separation decree when no declaration filed.](#)
(a) If the parties to a decree of legal separation at any time resume marital relations and file their written declaration of resumption, signed, acknowledged and witnessed, with the clerk of the superior court for the judicial district in which the separation was decreed, the declaration shall be entered upon the docket, under the entries relating to the complaint, and the decree shall be vacated and the complaint shall be deemed dismissed.

(b) If no declaration has been filed under subsection (a) of this section, then at any time after the entry of a decree of legal separation, either party may petition the superior court for the judicial district in which the decree was entered for a decree dissolving the marriage and the court shall enter the decree in the presence of the party seeking the dissolution.

[§ 46b-67. Waiting period. Effect of decree.](#) (a) Following the expiration of ninety days after the day on which a complaint for dissolution or legal separation is made returnable, or after the expiration of six months, where proceedings have been stayed under section 46b-53, the court may proceed on the complaint . . .

HISTORY:

- 1955 (Supp. 1955, vol. 2) § 3006d. *First Legislation.*

Public Act No. 390

COURT RULES:

- Conn. Practice Book (2012).
[§ 25-5](#). Automatic Orders upon Service of Complaint or Application
[§ 25-36](#). Motion for decree finally dissolving marriage after decree of legal separation
[§ 25-37](#). —Notice and hearing.

FORMS:

- 2 Conn. Practice Book (1997).
Form 504.1. Complaint for legal separation
[Form 504.2. Petition for decree dissolving marriage after legal separation](#)
- [Library Of Connecticut Family Law Forms](#), Thomas D. Colin, Editor (2008).
Form #
015-001 - Petition for Decree Dissolving Marriage after Legal Separation
015-002 - Application for Order of Notice
015-003 - Order for Hearing and Notice
- Mary Ellen Wynn and Ellen B. Lubell, [Handbook of Forms for the Connecticut Family Lawyer](#) (1991).
Form II-A-2. Complaint, p. 6.
Form XVIII-A-1a. Petition for decree dissolving marriage after legal separation, p. 261
Form XVIII-A-2. Declaration of resumption of marital relationship, p. 264

CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- [Satter v. Satter](#), 153 Conn. 230, 231, 215 A.2d 415 (1965).
"In 1955, the legislature enacted Public Act No. 390, now General Statutes §§ 46-29 and 46-30, which provided that a legal separation could be decreed upon the petition of a party on grounds which would have entitled that party to a divorce. Such a separation would have the effect of a divorce except that neither party would be free to marry any third party unless a decree dissolving and terminating the marriage was subsequently rendered upon petition of either party."
- [Mitchell v. Mitchell](#), 194 Conn. 312, 318-19, 481 A.2d 31, 34 (1984). "General Statutes 46b-65 (codified as § 46-61 and recodified in 1979 as § 46b-65) was enacted in 1973 as part of a complete revision of the domestic relations statutes. Public Acts 1973, No. 73-373."

ENCYCLOPEDIAS:

- 24 [Am Jur 2D](#) *Divorce & Separation* (2008).
§ 372. —Converting limited divorce into absolute divorce

**TEXTS &
TREATISES:**

- Arnold H. Rutkin and Kathleen A. Hogan, Connecticut Practice Series, [Family Law and Practice with Forms](#) (3d ed. 2010).
Chapter 10. Legal separation
§ 10:1. In general
§ 10:2. Basis for legal separation
§ 10:6 Distinction from dissolution
§ 10:9. Resumption of marital relations; reconciliation
§ 10:10. Conversion to dissolution—Procedure
§ 10:11. —Legal considerations
- 2 Renee Bevacqua Bollier and Susan V. Busby, [Stephenson's Connecticut Civil Procedure](#) (3rd ed. 2002).
Chapter 20. Family law procedures
§ 241. History of Connecticut's divorce law
§ 262. Legal Separation
- 1 [Superior Court Civil Rules](#), Connecticut Practice Series (2011-2012 ed.)
Authors' Comments following § 25-36
- Mary Ellen Wynn and Ellen B. Lubell, [Handbook of Forms for the Connecticut Family Lawyer](#) (1991).
Chapter XVIII. Legal separation
Notes & Comments, p. 206.

LAW REVIEWS:

- Arthur E. Balbirer and Gaetano Ferro, *Survey of 1991 Developments In Connecticut Family Law*, 66 Conn. B.J. 40 (1992).
Conversion of legal separation to dissolution,
p. 62-63.

Section 2: Grounds for Legal Separation

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"A decree of dissolution of a marriage or a decree of legal separation shall be granted upon a finding that one of the following causes has occurred:

- (1) The marriage has broken down irretrievably;
- (2) the parties have lived apart by reason of incompatibility for a continuous period of at least the eighteen months immediately prior to the service of the complaint and that there is no reasonable prospect that they will be reconciled;
- (3) adultery;
- (4) fraudulent contract;
- (5) wilful desertion for one year with total neglect of duty;
- (6) seven years' absence, during all of which period the absent party has not been heard from;
- (7) habitual intemperance;
- (8) intolerable cruelty;
- (9) sentence to imprisonment for life or the commission of any infamous crime involving a violation of conjugal duty and punishable by imprisonment for a period in excess of one year;
- (10) legal confinement in a hospital or hospitals or other similar institution or institutions, because of mental illness, for at least an accumulated period totaling five years within the period of six years next preceding the date of the complaint." Conn. Gen. Stat. [§ 46b-40](#)(c) (2011).

The [Dissolution of Marriage in Connecticut](#) research guide provides more information on the individual grounds for divorce and legal separation.

Section 3: Reconciliation

A Guide to Resources in the Law Library

SCOPE:

Bibliographic sources relating to reconciliation after legal separation

TREATED ELSEWHERE:

- Motion Practice in Family Matters (Research Guide)
[Section 3: Request for Conciliation](#)

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2011).
[§ 46b-65](#). Filing of declaration of resumption of marital relations; dissolution of marriage after legal separation decree when no declaration filed.
(a) If the parties to a decree of legal separation at any time resume marital relations and file their written declaration of resumption, signed, acknowledged and witnessed, with the clerk of the superior court for the judicial district in which the separation was decreed, the declaration shall be entered upon the docket, under the entries relating to the complaint, and the decree shall be vacated and the complaint shall be deemed dismissed.

FORMS:

- Mary Ellen Wynn and Ellen B. Lubell, Handbook of Forms for the Connecticut Family Lawyer (1991).
Form XVIII-A-2. Declaration of resumption of marital relationship, p. 264

CASES:

- [Mitchell v. Mitchell](#), 194 Conn. 312, 481 A.2d 31 (1984). "If the parties had resumed marital relations, even for a trial reconciliation, or the petitioner states in the petition that they did not resume and the defendant disputes that fact, the parties cannot proceed under the summary method of § 46b-65(b) but must instead proceed under the general dissolution provision, § 46b-40."

TEXTS & TREATISES:

- Arnold H. Rutkin and Kathleen A. Hogan, Connecticut Practice Series, [Family Law and Practice with Forms](#) (3d ed. 2010).
Chapter 10. Legal separation
§ 10:9 Resumption of marital relations; reconciliation

Section 4: Conversion of Legal Separation into Dissolution of Marriage

A Guide to Resources in the Law Library

SCOPE:

Bibliographic sources relating to the conversion of a legal separation into a dissolution of marriage.

DEFINITIONS:

- **DECLARATION OF RESUMPTION OF MARITAL RELATIONS:** "General Statutes 46b-65 (b) establishes an expeditious method by which the parties can convert a legal separation into a dissolution. Practice Book 472 [now 25-36] requires a party seeking to convert the legal separation into a dissolution to state, inter alia, whether the parties had resumed marital relations. If the parties have, in fact, resumed marital relations, they cannot proceed under the summary procedures provided in 46b-65(b), but must instead proceed under the general dissolution provision, 46b-40." [Mignosa v. Mignosa](#), 25 Conn. App. 210, 213, 594 A.2d 15 (1991).
- **FINANCIAL ORDERS:** "Neither the trial court's memorandum of decision nor the judgment file contains any finding that the orders entered at the time of the legal separation were 'fair and equitable' in light of the circumstances existing at the time of the dissolution. Therefore, although we hold that the trial court properly granted the defendant's petition converting the parties' legal separation into a dissolution of marriage, the trial court's incorporation of the prior orders entered in the decree of legal separation into the decree of dissolution of marriage without a finding that the orders were 'fair and equitable' at the time of the dissolution was improper." [Mignosa v. Mignosa](#), 25 Conn. App. 210, 216, 594 A.2d 15 (1991).
- "Notwithstanding the decisions in *Mignosa* and *Szot*, there is a split of authority within the Superior Court regarding whether the trial court may modify a separation agreement when incorporating it into a dissolution decree because of the earlier Supreme Court opinion in [Mitchell v. Mitchell](#), 194 Conn. 312, 481 A.2d 31 (1984)." [Buggy v. Buggy](#), Superior Court, Judicial District of Stamford – Norwalk, No. FA054005647S (Oct. 25, 2010) (2010 WL 4723213).

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2011).
[§ 46b-65](#). Filing of declaration of resumption of marital relations; dissolution of marriage after legal separation decree when no declaration filed.
(a) If the parties to a decree of legal separation at any time resume marital relations and file their written declaration of resumption, signed, acknowledged and witnessed, with the clerk of the superior court for the judicial district in which the

separation was decreed, the declaration shall be entered upon the docket, under the entries relating to the complaint, and the decree shall be vacated and the complaint shall be deemed dismissed.

(b) If no declaration has been filed under subsection (a) of this section, then at any time after the entry of a decree of legal separation, either party may petition the superior court for the judicial district in which the decree was entered for a decree dissolving the marriage and the court shall enter the decree in the presence of the party seeking the dissolution.

COURT RULES:

- Conn. Practice Book (2012 ed.)
[§ 25-36. Motion for decree finally dissolving marriage after decree of legal separation](#)
[§ 25-37.](#) —Notice and hearing

FORMS:

- 2 Conn. Practice Book (1997).
Form 504.2: [Petition for decree dissolving marriage after legal separation](#)
- [Library Of Connecticut Family Law Forms](#), Thomas D. Colin, Editor (2008).
Form #
015-001 - Petition for Decree Dissolving Marriage after Legal Separation
015-002 - Application for Order of Notice
015-003 - Order for Hearing and Notice
- [Handbook of Forms for the Connecticut Family Lawyer](#), Mary Ellen Wynn and Ellen B. Lubell (1991).
Form XVIII-A-1a. Petition for decree dissolving marriage after legal separation, p. 261
Form XVIII-A-2. Declaration of resumption of marital relationship, p. 264

CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- [Sargent v. Sargent](#), 125 Conn. App. 824, 826, 9 A.3d 799 (2011). "On March 16, 2009, the defendant filed a motion for modification of alimony and a petition for a decree dissolving the parties' marriage pursuant to General Statutes § 46b-65 (b). In support of his motion for modification of alimony, the defendant claimed that his 'financial circumstances [had] changed significantly' from the time that the parties were legally separated. The plaintiff filed an objection to the defendant's petition for dissolution on June 3, 2009, claiming that conversion of the separation into a dissolution would cause her irreparable harm."
- [Buggy v. Buggy](#), Superior Court, Judicial District of Stamford – Norwalk, No. FA054005647S (Oct. 25, 2010) (2010 WL 4723213). "Notwithstanding the decisions in *Mignosa* and *Szot*, there is a split of authority within the Superior Court

regarding whether the trial court may modify a separation agreement when incorporating it into a dissolution decree because of the earlier Supreme Court opinion in *Mitchell v. Mitchell*, 194 Conn. 312, 481 A.2d 31 (1984)."

- *Gilbert v. Gilbert*, No. FA 04-0485657 (Conn. Super. New Haven, May 13, 2008), 45 Conn. L. Rptr. 553 (July 21, 2008). "Before the court can address financial issues when converting a legal separation to a decree of dissolution, it must first examine the relationship of the parties. If it determines that the parties have resumed marital relations, it must reexamine the final order entered at the time of the legal separation in a full hearing. If the parties' relationship is unchanged, the court plays a minor role and merely converts the de facto dissolution to a de jure dissolution."
- *Myjak v. Myjak*, No. FA97-0083027 S (Conn. Super. Ct., J.D. Middlesex, Nov. 17, 2000). "A final distribution of property and financial orders after legal separation should not be based on a separation agreement without an inquiry by the court as to whether the agreement is fair and equitable at the time of the dissolution. *Mignosa v. Mignosa*, 25 Conn. App. 210, 594 A.2d 15 (1991)."
- *Bemonte v. Bemone*, 44 Conn. Supp. 431, 435-436, 693 A.2d 739 (1996). "Absent a properly executed declaration of resumption of marital relations or intervention by court action opening the judgment for good reason, the judgment of legal separation, once the appeal period has expired, is final. The division of assets and liabilities is also final. An assignment of property is nonmodifiable. Hence, the court is without jurisdiction or other authority to modify a final judgment of legal separation insofar as it assigns property. The holding in *Mignosa* must give way to the holding of the majority in *Mitchell* which controls the outcome of the present case."
- *Szot v. Szot*, 41 Conn. App. 238, 241, 674 A.2d 1384 (1996). "In order to determine whether such orders were fair and equitable, the parties were entitled to an opportunity to present evidence in a hearing."
- *Marsillio v. Marsillio*, Superior Court, Judicial District of Bridgeport, No. FA930301875S (Nov. 7, 1994) (12 Conn. L. Rptr. 665, 666) (1994 WL 645954). "To be added to the statutory requirement for a decree of dissolution of marriage after a decree of legal separation are two further requirements, one, that the parties have not resumed living together (*Mitchell v. Mitchell*, supra) and two, that the agreement of the parties entered into at the time of the decree of legal separation continues to be fair and equitable at the time of entry of the decree of dissolution. (*Mignosa v. Mignosa*, supra.)"

- [Mignosa v. Mignosa](#), 25 Conn. App. 210, 216, 594 A.2d 15 (1991). "Therefore, although we hold that the trial court properly granted the defendant's petition converting the parties' legal separation into a dissolution of marriage, the trial court's incorporation of the prior orders entered in the decree of legal separation into the decree of dissolution of marriage without a finding that the orders were 'fair and equitable' at the time of the dissolution was improper."
- [Mitchell v. Mitchell](#), 194 Conn. 312, 326, 481 A.2d 31 (1984). "If the parties had resumed marital relations, even for a trial reconciliation, or the petitioner states in the petition that they did not resume and the defendant disputes that fact, the parties cannot proceed under the summary method of § 46b-65(b) but must instead proceed under the general dissolution provision, § 46b-40."

**TEXTS &
TREATISES:**

- 1 [Superior Court Civil Rules](#), Connecticut Practice Series (2011-2012 ed.)
Authors' Comments following § 25-36
- Arnold H. Rutkin and Kathleen A. Hogan, Connecticut Practice Series, [Family Law and Practice with Forms](#) (3d ed. 2010).
Chapter 10. Legal separation
§ 10:10 Conversion to dissolution
- 2 Renee Bevacqua Bollier and Susan V. Busby, [Stephenson's Connecticut Civil Procedure](#) (3rd ed. 2002).
Chapter 20. Family law procedures
§ 262. Legal Separation
c. Procedure

Figure 1: Petition for decree dissolving marriage after legal separation

Petition for Decree Dissolving Marriage after Legal Separation

(Caption of legal separation action)

To the Superior Court for *(judicial district where legal separation was entered)*

The undersigned, a party to the above entitled action, respectfully represents

1. On *(date)* a judgment for legal separation was entered by this court in the above entitled action as of record appears.

2. The parties have not resumed marital relations since the entry of the decree, and no written declaration of the resumption of marital relations has been filed pursuant to Gen. Stat., § 46-61.

Wherefore the undersigned prays that the court enter a decree dissolving the marriage of the parties.

(Name of Petitioner)

By _____

His Attorney

(Caption of legal separation action)

APPLICATION FOR ORDER OF NOTICE

The undersigned respectfully represents:

1. The accompanying petition for a decree dissolving the marriage of the parties to this action is being presented to the court.

2. The adverse party is now within the state and is residing at

or

2. The adverse party is not within the state, but resides at

or

2. The place of residence of the adverse party is unknown.

Wherefore, the petitioner requests that the court fix a time and place for a hearing on the petition and make an order of notice thereof

by personal service

or

in such manner as the court deems reasonable.

Petitioner

By _____

His Attorney

ORDER FOR HEARING AND NOTICE

It is further ordered that notice of the pendency of the petition and of the time and place of the hearing thereon be given to the adverse party
(if a resident of this state)

(or)

at least _____ days before the date of the hearing.

Assistant Clerk

By authority of the state of Connecticut you are hereby commanded to give notice of the pendency of the foregoing petition and of the time and place of the hearing thereon to *(name of adverse party)*

(if a resident)

by leaving a true and attested copy of the petition and of the foregoing order
for hearing and notice with and in his hands

or

(if non-resident or residence is unknown insert such directions as may be contained in the order)

at least _____ days before the date of the hearing.

Hereof fail not, but due service and return make

Dated at (*place and date*)

Commissioner of the Superior Court

(P.B.1978; see Rules, §§ 472 and 473; Gen. Stat., § 46-61.)